

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|--------------------------|---|-------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | Crim. No. 07-0057 |
| |) | |
| ROBERT JOHNSON, |) | |
| Defendant. |) | |
| |) | |

ORDER

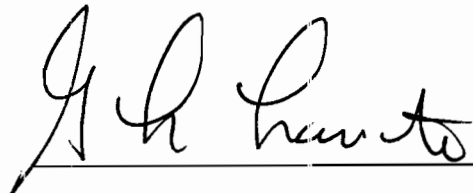
Defendant, Robert Johnson, has filed a motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). [doc. no. 117]. In short, Johnson asks the Court to reduce his 94 month sentence of incarceration to no more than an 84 month sentence based on: (1) guidelines amendments that eliminate recency points; and (2) guideline amendments that reduce the offense levels applicable to crack cocaine offenses in accordance with the Fair Sentencing Act of 2010 ("the FSA"). We conclude that Johnson does not qualify for a sentencing reduction for either reason.

In order for a defendant to be entitled to a reduction in sentence pursuant to section 3582(c)(2) an amendment must be deemed retroactive by the Sentencing Commission. The amendment to section 4A1.1(e) eliminating recency points has not been so identified. U.S.S.G. § 1B1.10(c). As such, it is not retroactive, and cannot be the basis of any reduction in

Johnson's sentence pursuant to section 3582(c)(2). U.S. v. Isaac, 655 F.3d 148, 158 (3d Cir. 2011).

Although the amendments to section 2D1.1 are retroactive, Johnson is nevertheless not entitled to a section 3582(c)(2) sentencing reduction based on them. Amend. 750, 759; U.S.S.G. § 1B1.10(c). Johnson's sentence was not calculated pursuant to the section 2D1.1 drug quantity tables. Instead, Johnson's offense level and criminal history category were both dictated by the career offender guidelines. U.S.S.G. § 4B1.1. As a result, amendments to section 2D1.1 have no effect on Johnson's sentence and no reduction under section 3582(c)(2) is warranted. U.S. v. Thompson, 682 F.3d 285 (3d Cir. 2012) (reaffirming U.S. v. Mateo, 560 F.3d 152 (3d Cir. 2009)); see also, U.S. v. Barney, 672 F.3d 228 (3d Cir. 2012).

For the foregoing reasons, IT IS HEREBY ORDERED this 24 day of September, 2012, that Johnson's Motion Seeking Modification of Sentence [Doc. No. 117] is DENIED.

 , C.J.

cc: All Counsel of Record